



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

YALE LAW JOURNAL

VOLUME XIV

1904-1905

PUBLISHED BY
THE YALE LAW JOURNAL COMPANY
NEW HAVEN, CONN.

COPYRIGHT BY THE YALE LAW JOURNAL COMPANY

1904-1905.

**PRESS OF THE
DORMAN LITHOGRAPHING COMPANY
NEW HAVEN, CONNECTICUT.**

INDEX.

ARTICLES.

American Law, Some Duties of American Lawyers to. <i>Elihu Root</i>	63
Case of John Chandler v. the Secretary of War, The. <i>Gordon E. Sherman</i>	431
Certainty and Justice. <i>Frederic R. Coudert</i>	361
Conditions in Contract. <i>Clarence D. Ashley</i>	424
Copyright, Duration of. <i>Samuel J. Elder</i>	417
Corporate Taxation in the United States, Equity and Inequity of. <i>Xenophon P. Huddy</i>	217
Corporations, Federal Control of. <i>Thomas Thacher</i>	301
Cross-Examination, Putting in One's Own Case on. <i>John H. Wigmore</i>	26
Development of the Judicial System in Rhode Island, The. <i>Amasa M. Eaton</i>	148
Dissenting Opinions. <i>Emlin McClain</i>	191
Droit d'Aubaine, The Modern. <i>Siméon E. Baldwin</i>	129
Due Process of Law. <i>Isaac Franklin Russell</i>	322
Duration of Copyright. <i>Samuel J. Elder</i>	417
Employers' Compensation Act, The Massachusetts Proposition for an. <i>Epaphroditus Peck</i>	18
Equity and Inequity of Corporate Taxation in the United States. <i>Xenophon P. Huddy</i>	217
Federal Control of Corporations. <i>Thomas Thacher</i>	301
Final Phase of the Insular Tariff Controversy, The. <i>Henry M. Hoyt</i>	333
Gambling and Cognate Vices. <i>John R. Dos Passos</i>	9
Hague Conference of 1904 for the Advancement of Private International Law, The. <i>Siméon E. Baldwin</i>	1
Incorporation by the States. <i>Herbert Knox Smith</i>	385
Individualism and Legal Procedure. <i>Salter Storrs Clark</i>	263
Insular Tariff Controversy, The Final Phase of the. <i>Henry M. Hoyt</i>	333
International Law, Some Problems of. <i>Charles Noble Gregory</i>	82
Judicial Legislation in New York. <i>Wilbur Larremore</i>	312
Law in the Louisiana Purchase. <i>William Wirt Howe</i>	77
Legal Life in the American Far West—A Belgian View of Western Justice. From the French of <i>A. Nérinck</i>	380
Legal Status of the Philippines as Fixed by the Recent Decision of the Supreme Court in the Jury Trial Cases, The. <i>Lebbeus R. Wilfley</i>	266
Louisiana Purchase, Law in the. <i>William Wirt Howe</i>	77
Massachusetts Proposition for an Employers' Compensation Act, The. <i>Epaphroditus Peck</i>	18
New York, Judicial Legislation in. <i>Wilbur Larremore</i>	312

Ownership and Recovery of Trust Deposits, The. <i>Albert S. Bolles</i> ...	200
Philippines, The Legal Status of the. <i>Lebbeus R. Wilfley</i>	266
Private International Law, The Hague Conference of 1904 for the Advancement of. <i>Simcon E. Baldwin</i>	I
Public Regulation of Quasi Public Corporations. <i>Henry H. Ingersoll</i> .	255
Putting in One's Own Case on Cross-Examination. <i>John H. Wigmore</i>	26
Quasi Public Corporations, Public Regulation of. <i>Henry H. Ingersoll</i> .	255
Rhode Island, The Development of the Judicial System in. <i>Amasa M.</i> <i>Eaton</i>	148
Some Duties of American Lawyers to American Law, <i>Elihu Root</i>	63
Some Problems of International Law. <i>Charles Noble Gregory</i>	82
Trade Secrets. <i>Bernard C. Steiner</i>	374
Trust Deposits, The Ownership and Recovery of. <i>Albert S. Bolles</i> ...	200
Wireless Telegraphy in War. <i>Theodore Salisbury Woolsey</i>	247

COMMENT AND RECENT CASES.

(The topics which have been the subject of editorial comment are italicized.)

ADMIRALTY—jurisdiction—beacon	349
ADVERSE POSSESSION—against whom	349
Interior department—jurisdiction	50
Railroad right of way	412
ASSAULT—exemplary damages—implication of malice	112
ATTACHMENT—alias writ	282
ATTORNEY AND CLIENT—lunacy—contract for retainer.....	50
BANKRUPTCY—attorneys—allowance	235
Claim—creditor pleading usury against another	235
Discharge—effect of amendment of 1903	282
Effect of discharge—judgment for damages for criminal conver- sation.....	176
Exemptions—wearing apparel	113
Fraudulent conveyance—suit to set aside.....	176
Inventor's rights before patent—transfer	236
Involuntary proceedings—who may maintain....	113
Jurisdiction—adverse claim—consent.....	176
Jurisdiction—involuntary petition—amendment.....	177
Lien—judgment within four months	113
Manufacturing corporation—laundry	349
Order to pay money—contempt	113
BANKS—liability to legal representatives of deceased depositor.....	350
Lien on funds—refusal to pay check ...	112
CARRIERS— <i>baggage distinguished from merchandise</i>	345
Construction of contract of employment	114
Death by wrongful act—passenger on construction train	351
Interstate commerce—passengers	460
Liability for injuries by crowd at station—negligence.....	51
<i>Liability of lessor railroad for injuries to lessee's servant aris- ing through negligence of lessee</i>	107

Limitation of liability—negligence—burden of proof	51
Loss of goods through act of God—previous negligence	460
Passenger tickets—statute of limitations	282
Railroads—fires—presumptive negligence	412
Railroads—removal of trespasser—liability for injury	183
Seaworthiness—injuries to passenger	405
Shipping—limitation of liability—knowledge of owners	119
Street Railways—injury to passenger—riding on platform	57
Trespassers on railroad—wanton negligence	464
CONFLICT OF LAWS—federal and state courts—equity	114
Statutory tort committed in foreign country—jurisdiction of federal court	51
CONSPIRACY—coercion—trade association	115
CONSTITUTIONAL LAW—compelling incriminating testimony—legislative pardon	115
Construction of viaduct—liability to abutting owner	350
<i>Discrimination in the taxation of state and national banks</i>	456
Due process—forfeiture of land for failure to pay taxes	237
Due process—public nuisance—abatement	177
Eminent domain—removal of cause	413
Equal protection—fish and game legislation—non-resident land owners	283
Equal protection—taxation	178
Foreign insurance corporations—revocation of authority	405
<i>Georgia chain-gang for petty offenses</i>	45
Infringement of judiciary—regulations of trial	283
Inheritance tax—exemptions	55
Inspection laws	350
Interstate commerce—original package	406
<i>Judicial inquiry into the validity of a municipal ordinance</i>	280
<i>Legislation against great commercial combinations</i>	44
Notice of tax sale—due process	284
Police power—possession of imported game in close season	284
<i>Police power—the ten-hour bakery law</i>	452
Police power—trading stamps	460
<i>Reasonableness in legislative regulation of fares</i>	454
<i>Rights and powers of telegraph companies under the Act of 1866</i>	403
Statute forbidding discharge of employee—membership in labor union	237
Statute of limitations—judgments	238
<i>Taxation of peddlers under the interstate commerce clause</i>	105
<i>To what extent a legislature may delegate its powers to a board or commission</i>	173
<i>Trend of decisions under the Sherman Anti-Trust Act</i>	400
CONTRACTS—accord and satisfaction—what constitutes	405
Executory—refusal to perform	406
Fraudulent breach—exemplary damages	407
<i>Liabilities arising out of contracts between labor unions and employers</i>	347

CORPORATIONS—foreign—depriving foreign corporations of the benefit of the statute of limitations.....	47
Municipal—defective sidewalk—constructive notice.....	461
Municipal—excavations of streets—lateral support.....	461
Municipal—licenses—reasonableness.....	118
Municipal—quorum of public board—notice to absent member ...	411
Municipal—voluntary payment of license fee—recovery.....	354
Private—agreement to subscribe for stock.....	461
<i>Private—appointment of receivers at the instance of creditors upon the mere insolvency of a corporation.....</i>	232
Private—compensation of president—implied contract.....	407
Private—directors—trustees for stockholders.....	178
<i>Private—right of a majority in church to change its doctrine and retain property against a dissentient minority.....</i>	398
CRIMINAL LAW—bets on horse races—sending money outside the state ..	116
Bribery—voting—validity of act.....	236
Concurrent jurisdiction—fraudulent proceedings.....	408
Evidence—letter from accused to wife.....	462
Evidence—refreshing memory.....	351
Forgery—what constitutes.....	410
Former jeopardy—singleness of transaction.....	179
Homicide—remarks by counsel to the jury.....	238
Lottery—chance.....	56
Lottery—"suit club".....	354
Misconduct of jury—new trial.....	238
Securing evidence—participation in act by him against whom it is committed.....	179
Successive offenses—double punishment.....	408
Sufficiency of indictment—review.....	285
Trial—effect of waiver of argument by accused.....	54
<i>What constitutes jeopardy.....</i>	43
DAMAGES—death by wrongful act—elements of compensation.....	239
Measure—trover.....	408
<i>Measure in conversions by stockbrokers.....</i>	455
Mutilation of dead body.....	351
Personal injuries—future suffering.....	239
DESCENT AND DISTRIBUTION—murder of ancestor.....	180
DIVORCE—condonation.....	116
EASEMENTS—drainage—surface waters.....	285
Lateral support—damage to abutting owner.....	242
Lot bounded on street marked on plat.....	352
Way of necessity—prescription—adverse use.....	118
EQUITY—election.....	180
Notice—sale by <i>bona fide</i> purchaser.....	352
Specific performance—contract to make a will.....	286
Specific performance—decree as to part interest—intention of parties.....	290
EVIDENCE—ancient deed—no witnesses or acknowledgment.....	240
Criminal law—letter from accused to wife.....	462
Declaration of agent.....	462
Documents—suppression—inference.....	463

Insanity—non-expert testimony.....	241
Mortgage—deed absolute on its face	354
Personal injuries—size of family	463
Presumption—probative force.....	353
Privileged communications—physician	180
Refreshing memory—criminal trial.....	351
Statements to attorney—privilege.....	409
Statute of frauds	465
Telegrams	409
FIXTURES —building material—conveyance of land and partially constructed building	241
Oil lease—removal on default	286
GUARANTY —construction	286
HOMESTEADS —addition.....	353
HUSBAND AND WIFE —husband's liability for wife's torts	54
INJUNCTIONS —interlocutory—review on appeal	463
Locating cemetery—nuisance	289
Public officers—trespass in discharge of duty	353
INNKEEPERS —liability to guests—personal injuries	116
INSURANCE —accident—construction of policy—technical words.....	410
Fire—proof of loss	181
Fire—severable policy	410
Life—agent—relation to insured	287
Life—assignment of policy—insurable interest	242
Life—limitation of action—validity	287
JURISDICTION —decision by tribunal of benefit association—review by courts	241
LANDLORD AND TENANT —breach of contract to repair—liability of landlord.....	55
LIBEL —articles libelous <i>per se</i>	117
Criticism made in jest	55
Privileged statements.....	356
LIMITATIONS —foreign judgments—validity of statute.....	238
Railroad ticket	282
MANDAMUS —telephones—compelling installation—bawdy house.....	182
MASTER AND SERVANT —assumption of risk—master's command	182
Breach of factory act—assumption of risk	288
<i>Fellow servant doctrine in the federal courts</i>	343
Safe materials—liability of master	56
Vice-principal	411
MORTGAGES —deed absolute on its face—evidence	354
Life tenant—validity	118
Recording of chattel mortgages—compliance with statute.....	355
NEGLECT —highway—dangerous condition	464
Ice on sidewalk—liability of landlord	411
Imputability—driver of vehicle and guest	288
Injury to child—trespasser.....	289
Joint liability.....	118
Owner of public resort—independent contractor	56
Railroads—fires—presumption	412
NUISANCES —abatement—due process of law.....	177
Cemetery—injunction.....	289

Obstruction to highway—ferry—special damages	181
Obstruction to highway—injuries to one coasting	181
Percolation of waters.....	464
Pollution of ice field—injunction	57
PARTNERSHIPS—conversion of realty—express agreement	183
Sale of property—accounting	355
PERSONAL PROPERTY— <i>notice as applied between successive encumbrancers of personality</i>	278
PRINCIPAL AND AGENT—delegation of authority—substitution	355
PRIVACY— <i>the right of</i>	458
PROCEDURE—competency of jurors—number of peremptory challenges .	117
Instructions to jury—opinion of court	466
Instructions to jury—presumptions.....	413
Instructions to jury—uncontroverted facts.....	467
Verdict—reception by clerk.....	413
QUO WARRANTO— <i>extent of the jurisdiction of an appellate court to issue an injunction</i>	109
SALES—breach of warranty—acceptance of goods	289
STARE DECISIS— <i>control of the courts over the intent of the legislature</i> .	230
TAXATION— <i>discrimination between state and national banks</i>	456
Equal protection—railroad property.....	178
Failure to pay— <i>forfeiture of land—due process</i>	237
Inheritance tax—exemptions.....	55
<i>Interstate commerce clause and taxation of peddlers</i>	105
Notice of sale— <i>due process</i>	284
Trading stamps— <i>“gift enterprise or lottery”</i>	120
Transfer—debts— <i>situs</i>	465
TORTS—discharge of servant—malicious procurement	54
Infants—damages— <i>earning power</i>	466
Joint wrongdoers— <i>release of one—effect</i>	119
<i>Release of one joint tortfeasor as a discharge to the others</i>	277
TRUSTS—fraudulent conveyances.....	240
<i>Savings bank deposits as irrevocable trusts</i>	171
UNFAIR TRADE— <i>use of similar surname</i>	243
USURY—promissory note— <i>lex loci contractus</i>	243
WATERS—riparian rights—irrigation.....	184
WILLS—descent of burial lots—residuary devise	57
Extrinsic documents— <i>incorporation by reference</i>	58
Forfeiture clause— <i>stipulation against contest</i>	58
Promise to convey property— <i>trustee ex maleficio</i>	356
<i>Scope of authentication by signature</i>	226

BOOK REVIEWS.

Alderson, William A.— <i>A Practical Treatise on the Law of Receivers</i> ...	471
Baldwin, Simeon E.— <i>American Railroad Law</i>	59
Beale, Joseph Henry, Jr.— <i>The Law of Foreign Corporations and Taxation of Corporations, Both Foreign and Domestic</i>	292
Bodington, Oliver E.— <i>An Outline of the French Law of Evidence</i>	188

Clark, Ellery H.—Street Railway Accident Law.....	185
Clephane, Walter C.—The Organization and Management of Business Corporations	358
Collier, William Miller—The Law and Practice of Bankruptcy	415
Douglass, J. F.—The Law of Private Corporations of the State of Washington	293
Edgington, T. B.—The Monroe Doctrine.....	121
Flanders, Henry—An Exposition of the Constitution of the United States	122
Frost, Thomas Gould—A Treatise on the Incorporation and Organization of Corporations	294
Gilbert, Frank B.—Street Railway Reports, Annotated. Vol. II.	359
Godard, Edwin C.—Outlines of the Law of Bailments and Carriers; Cases on Bailments and Carriers	295
Gould, John M.—The National Bank Act.	186
Hughes, Robert M.—Handbook of Jurisdiction and Procedure in United States Courts.....	294
Ingalls, George Arthur—An Outline of Municipal Government in the City of New York	244
Ingersoll, Henry H.—Handbook of the Law of Public Corporations....	245
Joyce, Joseph A. and Howard C.—A Treatise on Damages.....	244
Langdell, C. C.—A Brief Survey of Equity Jurisprudence	293
Longsdorf, George Foster, Editor—Current Law.....	187, 470
Nellis, Andrew—Street Railroad Accident Law.....	60
Patterson, C. Stuart—The United States and the States under the Constitution	291
Pingrey, Darius H.—Extraordinary, Industrial and Interstate Contracts.	470
Pomeroy, John Norton—Code Remedies	123
Poste, Edward—Institutions of the Roman Law, by Gaius.....	416
Radcliffe, F. R. Y., and Miles, J. C.—Cases Illustrating the Principles of the Law of Torts	124
Robbins, Alexander H.—American Advocacy.....	185
Rood, John R.—Wills and Gifts Causa Mortis.....	291
Snyder, William L.—Annotated Interstate Commerce Act and Federal Anti-Trust Laws	122
Stocquart, Émile—Aperçu de l'Évolution Juridique du Mariage	357
Taylor, Hannis—Jurisdiction and Procedure of the Supreme Court of the United States.....	469
Tompkins, Leslie J.—A Summary of the Law of Private Corporations..	123
Vance, William Reynolds—Handbook of the Law of Insurance	186
Wharton, Francis—A Treatise on the Conflict of Laws	471
Wharton and Stillé.—Medical Jurisprudence	468
Wigmore, John H.—Evidence in Trials at Common Law	124, 245, 415
Willoughby, W. W.—The American Constitutional System.....	358
Young, J. S.—A Political and Constitutional Study of the Cumberland Road	61